Fusaro, Carolyn

From: Robert Bilek [rwbilek@sbcglobal.net]
Sent: Wednesday, February 27, 2013 9:04 AM
To: Fusaro, Carolyn
Cc: Gonyea, Donald; Selmeski, Tonia; Thomas Steinke; Sanford Wakeman
Subject: EXIDE SEDRAP REVISED APRIL 2012
Attachments: EXIDE SEDRAP ISSUES 2-27-13.docx

Dear Ms. Fusaro:

I understand that Mr. Steinke is sending you a formal document representing the Fairfield Shellfish Commission's collective position regarding this SEDRAP.

Attached is a Word Document in "docx" format that represents issues I feel should be addressed. Most of these were discussed at Shellfish Commission Meetings on January 23, January 30, and February 13, but a few were not.

I believe that all parties involved want Exide to remediate Mill River as expediciously as possible. However, after decades we would like it done correctly, and with minimal damage to our fish and shellfish populations. It is disturbing that Superior Plating is not part of this remediation process as of today.

We are disappointed that your staff was unable to attend any of our meetings to discuss these issues, but hope you will seriously consider these and the many other concerns, questions and recommendations that are being brought to your attention.

Respectfully submitted,

Robert W. Bilek

EXIDE SEDRAP FOR MILL RIVER
ISSUES/RECOMMENDATIONS/QUESTIONS
FEBRUARY 27, 2013

***DEP* CONSENT ORDER SRD-193 Dated 10/20/08**

Sect. B.2.d.(6)
This states in part that the Respondent (Exide and Vale Inco) shall "propose a detailed remedial action plan ... for lead in sediments in the Mill River Study Area ... and schedule to perform remedial actions. The schedule required by this paragraph shall also include a schedule for and obtaining all permits and approvals required..."

There is no schedule for applying for and obtaining all permits and approvals, including the NPDES Permit.

Is this really a "detailed" remedial action plan or more of a conceptual roadmap, since much of what will take place will be left up to the discretion of the contractor? How can DEEP issue permits when the details are undecided/unknown?

Sect. B.2.f.(1)
"On or before 90 days after the Commissioner has approved, as applicable, a remedial action plan, pursuant to paragraph B.2.d. of this Consent Order, the Respondent shall apply for all permits that are necessary to carry out the remedial action approved by the Commissioner."

Any affected town relies on this process.

In the case of Fairfield's Mill River remediation, the Commissioner has not approved the last SEDRAP dated October, 2011, Rev. April 2012. Yet Exide's NPDES Permit Application is dated 6/22/12. And, on 1/7/13, DEEP issued a Notice of Tentative Determination of Intent to Issue a NPDES Permit to Exide Group Inc. identified as Application NO. 201205444 and Permit ID NO. CT0030651.

This notice allowed 30 days for comment. This was extended to 2/20/13 after a request by the Shellfish Commission and others for more time. Still, the comment period for the NPDES Permit ends before the comment period for the SEDRAP, which ends 2/28/13. This forces us to comment on a permit application before we even have questions answered regarding the SEDRAP, and there are many. This seems backwards. Is this process being followed in compliance with the consent order?

Also, DEEP is using a General Permit. Fairfield did not know about this until the second half of 2012. As a result, Fairfield's various commissions tasked with protecting our interests and resources have been excluded from having public hearings on various permits normally associated with this type of SEDRAP. This is a major undertaking within Fairfield, and the commissions have no opportunity to intervene in a meaningful way. Who benefits from the use of a General Permit? How does the use of a General Permit benefit Fairfield, which has lived with the lead pollution for decades?

REMEDIAL ACTION PLAN FOR LEAD IMPACTED RIVER SEDIMENTS MILL RIVER STUDY AREAS I-V (REVISED APRIL 2012)

MAJOR OVERALL CONCERNS ABOUT THIS PROJECT

- Protection of spawning fish and shellfish (hard clams, oysters, blue crabs, river herring) by using cofferdams in Areas I, II and III
- Potential closing of recreational shellfish Area A off Sasco Beach and commercial shellfish beds in Fairfield's Shellfish Management Area as a direct result of dredging operations, and compensatory mitigation if this occurs
- Opening Mill River for many recreational uses
- Getting Superior Plating to remediate Chromium concurrent with Exide to avoid many more years of shutting down Mill River for wading, swimming, shellfishing and crabbing
- Remediation of the river bottom and banks due to damage from this project

EXECUTIVE SUMMARY

Pg. iv. "The following table presents a summary of the calculated estimate of the volume of sediment determined to exhibit lead concentrations greater than the agreed upon cleanup criteria." It shows (in cu. yds) Area I – 4,441, Area II – 4,978, Area III – 5,908, Area IV – 904, Area V – 5,210, for a total of 21,440 cu. yds. This is a very specific calculation based on a lengthly study of the river bottom.

And yet, the Exide NPDES Permit Application For Wastewater Discharge Dated 6/12/12 in ATT A Executive Summary states "The discharge is the result of dewatering activities involved with the dredging of approx. 27,600 cu. yds. of lead-impacted Mill River sediment."

Why is DEEP approving a permit based on sediment from 27,600 cu. yds. when the SEDRAP shows 21,440 cu. yds.? This is like applying to build a 3 lane highway and then submitting a permit application to build a 4 lane highway and getting it approved without any explanation at all. Does the permit application not have to factually match the SEDRAP? How was the new amount calculated, and why is it so different (+28%)?

CLEANUP CRITERIA

Pg. 4 "...cleanup criteria of 220 mg/kg lead be followed for Areas I-IV... A cleanup level of 400 mg/kg lead was recommended for Area V..."
Pg. 8 "Any sample location exhibiting a concentration more than double the cleanup criteria, during post remediation confirmation sampling will need to be addressed in a supplemental effort, pending an environmental net benefit analysis of the merits of any supplemental effort..."

So, that means there can be locations with up to 440 mg/kg in Areas I-IV or 800 mg/kg lead in Area V, and Exide and DEEP agree this is OK. And, even if the sample is greater than double the criteria, it may not have to be remediated depending on the environmental net benefit analysis. Who does such an analysis, and why would it be OK? How can leaving lead at these levels in these locations meet the criteria of protecting the public's use of the river and other organisms living in the river?

With lead at those higher levels, will the river be re-opened for harvesting clams, oysters and blue crabs at these levels, and will the river be safe for pregnant moms and kids to wade and swim in this water? If not, what has been accomplished?

DREDGING

Pg. 5-6 In 1983, Exide used a "hydraulic dredge fitted with a shroud and variable speed cutter head and dredge pump." After confirmation sediment sampling, there were "still elevated lead concentrations," so more dredging was done. This meant an extra 6.9% in cu. yds. were removed. Exide plans to use the same basic technology this time, so we should assume the same results. At 21,440 cu. yds. per the SEDRAP we can expect to dredge about an extra 1,479 cu. yds. of sediment. This will impact areas of the river that are not currently contaminated. At 27,600 cu. yds. per the NPDES Permit, this equates to 1,904 cu. yds.

Also, are these silt curtains any better than the ones used in 1983? Why are they better? How will they prevent contaminated resuspended sediment from escaping around the sides or over the top or under the bottom of the silt curtains as mud waves along the bottom as occurred in 1983?

Why not use cofferdams in areas I, II and III if Exide insists on remediating during fish and shellfish spawning seasons? These heavily polluted areas, unlike Area IV and V, are primarily commercial. As stated on pg. 9, "Land use ... can be classified as mostly residential north of the CT Turnpike and industrial/commercial between the Turnpike and the tidal dam..." However, on pg. 36, it states as a major disadvantage that "a land based approach (cofferdams) ... presents a problem because the properties immediately adjacent to the river are largely residential in nature." That is simply not true, and is even contradicted on pg. 9. There is no reason from an environmental protection viewpoint that one technique must be used on all five areas. The use of cofferdams would eliminate a high percentage of the objectionable issues presented here and by others. PLEASE CONSIDER THIS.

OUT OF WATER AREAS

Pg. 21 "A limited out-of-water study was undertaken in 2009..." "... the report concluded that the relatively low levels of lead detected in the samples were in the range of background for Fairfield... and further study was not recommended."

This study was done in 2009, before Hurricane "Sandy". Due to the extremely high tides and surge up the river during "Sandy", it would be prudent to check again to see if lead and/or chromium has been moved onto land from the river bottom.

SPECIES OF SPECIAL CONCERN

Pg. 24 "On September 22, 2009...Nancy Murray, NDDB Program Coordinator, ... stated that 'According to our information, there are no known extant populations of Federal or State Endangered, Threatened, or

Special Concern Species that occur at the site in question."

Is that still true for the Blueback Herring? Will it be affected by the planned dredging and waste water discharge as described in the NPDES Permit during spawning season?

SOCIO-ECONOMIC ISSUES

Pg. 27 4.4.1 This segment discusses risks in the immediate work area. "During remedial activities fishing/shellfish harvesting will not be physically possible in the immediate area of work ... and the destruction of substrates ... may temporarily decrease fish and shellfish populations."
4.4.2 "A proactive sediment remediation alternative (e.g. dredging) is expected to increase short-term risk factors due to physical disturbance of organisms and potential sediment resuspension..."

What this does not address is the possibility of shutting down the Town of Fairfield Recreation Area A for clamming, and/or the commercial shellfishermen who operate off of Southport Harbor. This will be a massive dredging project, and it could create enough contaminated resuspended sediment so that more than lead will be moved downstream. If it causes bacteria counts to be elevated, the Bureau of Aquaculture can shut down our conditionally approved areas for significant periods of time. The other possibility is that an entire new annual "class" of shellfish (clams and oysters) will be impacted severely each season that Exide is allowed to dredge during the spawning periods.

This type of shut- down would be due to Exide's actions, and so Exide should provide Compensatory Mitigation to the Fairfield Shellfish Commission if such a closing occurs. Commercial Shellfishermen could also be impacted since they are also operating in "Conditionally Approved" areas. DEEP should insure this is arranged in advance to protect the town in case we are shut down.

TURBIDITY MONITORING

Pg. 53 "Turbidity meters ... will measure in real time." "A text message will be instantaneously and automatically sent to the foreman and CCA field manager when turbidity levels exceed the prescribed limit, and remediation operations will be immediately halted." Sounds good.

Then on Pg. 56 it states "The following numerical action levels will be used..." "If the above criteria are exceeded, the following actions will be undertaken: <u>0-30 Minutes After Exceedance Registers</u> ... "the Engineer and Contractors Project Manager will communicate with the dredge operator to determine if a visible plume is observed... and if anything occurred..." So here we have a half hour gone. Then <u>>30 Minutes After Exceedance</u> " If, after 30 minutes the downstream monitor is still reporting an exceedance of the numerical criteria, the Engineer will visit the in-water downstream monitoring station. The fixed turbidity monitor will be checked and the turbidity measurement will be confirmed using a hand held turbidimeter and a manually collected sample of river water... " etc.

How long will this take? And the real issue is, will the remediation operations be halted <u>immediately</u> as per Pg. 53, or will they continue to dredge until all these steps take place?

CONFIRMATION SAMPLING OF RIVER SEDIMENTS

Pg. 57 8.3 This discusses samples of bottom sediments inside remediation areas.

Will they also check outside the remediation area for re-deposited lead sediments given the propensity for the silt curtains to fail? If not, why not?

REMEDIAL ACTION PLAN IMPLEMENTATION SCHEDULE

Pg. 75-76 This particular plan shows Area V being done last. This make no sense to us. Excide should change the schedule so the upriver Area V is dredged first, then work downstream to Areas I, II, III, then IV in order to avoid recontamination of areas below any area that has been already remediated

OCTOBER 12,2012 DEEP LETTER TO SUPERIOR PLATING COMPANY RE: STIPULATED JUDGEMENT NO. CU-89-0355556 S

Pg. 2 "Superior Plating must complete an investigation of the extent and degree of sediment pollution at and migrating from the Site to the satisfaction of the Commissioner. Therefore, ... submit a supplemental investigation work plan ... to the Department within 45 days of the date of this letter." ...
"1. Sediment
On January 3, 2011 the Department received the report entitled Evaluation of Chromium in Mill River Sediment, Superior Plating Company ..."
"The Sediment Evaluation concludes ... remediation of chromium-impacted sediments is not required. The Department disagrees ... and finds that the Sediment Evaluation is deficient and disapproved."
Pg. 4 "The Sediment Evaluation must be revised to address the issues discussed above and ... must be submitted to the Department for review and approval within 45 days of the date of this letter."
Pg. 6 "To minimize the disturbance of the Mill River from remedial activities and expedite the clean up of the Mill River, the sediment characterization activities should be completed as soon as possible but no later than December 31, 2012 to ensure that a remedial action plan can be developed and completed in a manner which coordinates any necessary remediation with EGI's sediment remediation. If you fail to comply with the above mentioned deadlines ... Superior Plating may be in noncompliance with the Stipulated Judgement. The Department may also evaluate potential enforcement actions."

So, did Superior Plating comply with the deadlines set forth in this letter? If not, was an extension granted? If it was, what is the new deadline? What enforcement actions can be taken by the Department?

This is a critical issue. If Superior Plating does not come to the table soon, we will have to go through this process all over again in the future.

NOT COVERED BY THE SEDRAP, NPDES PERMIT APPLICATION OR TENTATIVE DETERMINATION TO ISSUE A PERMIT

The above documents do not cover any significant remediation of the Mill River or of it's banks after this

dredging project is completed. I see no mention of filling in holes created by the dredging with clean material so they do not fill with leaves and composting organic matter, or of replacing logs or rocks to provide the habitat a river bottom needs. Nor did I see any mention of remediating the shoreline with trees and shrubs where damaged during dredging, provision for public access, etc. as compensation for the amount of damage done to our Mill River and the loss of public use of the river for recreactional swimming, clamming and crabbing for decades. This should be part of the remediation requirements.

RWB
2-27-13